

21 November 2011

From: Mark S. Phillips, Polygraph Examiner, National Reconnaissance Office  
To: Inspector General, Department of Defense

SUBJECT: FEDERAL POLYGRAPH VIOLATION OF EXECUTIVE ORDER 12333

References: (a) Executive Order 12333  
(b) Department of Defense Instruction 5210.91  
(c) Civilian Personnel Position Description (43616), Security Specialist

Enclosures: (1) Examiner Stats 1 October 2010 – 31 August 2011  
(2) Polygraph Request Composite Report, 11-GA-00738, 4 Jan 2011  
(3) DCIPS Performance Appraisal Application, 1 Oct 2010 – 30 Sept 2011  
(4) PMB Reportable Information Guidelines (Revision #1)  
(5) Operating Instruction 106, Polygraph Management Branch, 3 Oct 2005

1. I am a Department of the Air Force polygraph examiner assigned to the National Reconnaissance Office in Chantilly, Virginia. My performance evaluation is largely based upon my ability to obtain Code 55 admissions during the conduct of counterintelligence-scope polygraph examinations. Information defined as Code 55 by Polygraph Management Branch (PMB) is lifestyle in nature. I have asked management to make me aware of their legal authority to actively pursue lifestyle information during the administration of a standardized Department of Defense counterintelligence-scope test. PMB has failed to respond to my request for information. However, for raising these issues, I have been subject to harassment and poor performance evaluations. Consequently, I assert that without placing questions of a lifestyle nature on the actual polygraph test, PMB has developed a method of using the polygraph as a backdrop to elicit information that exceeds counterintelligence limitations by using a system of performance incentives to reward examiners for obtaining Code 55 admissions. This practice violates the rights of Americans and is non-compliant with EO 12333 and DoDI 5210.91.
2. The statement below supports my allegations.

Mark S. Phillips, Jr.

The procedures established by the National Reconnaissance Office (NRO) to administer polygraph examinations to United States persons are in violation of Executive Order (EO) 12333. Moreover, the use of polygraph testing by NRO to perform personnel security screening is non-compliant with applicable Department of Defense (DoD) authorities. Consequently, NRO has institutionalized a process of using the polygraph as a method of collecting information that is designed to circumvent the legal protections afforded to United States persons.

The purpose of EO 12333 is explicitly stated as follows: “to achieve the proper balance between the acquisition of essential information and the protection of individual interests.”<sup>1</sup> Consistent with this declared purpose, EO 12333 restricts intelligence collection techniques directed against United States persons to “the least intrusive” methods feasible.<sup>2</sup> This restriction upon intelligence collection techniques applies to polygraph examinations administered to United States persons for routine personnel security screening.<sup>3</sup> Accordingly, in the case of NRO, all information arising from personnel security investigations aided by polygraph testing must conform to collection restrictions established by DoD authority.

For the purposes of polygraph testing, NRO is defined as a DoD Component.<sup>4</sup> As such, the legal authority of NRO to administer polygraph examinations applies only to DoD personnel. Therefore, consistent with EO 12333, DoD Instruction (DoDI) 5210.91 affords DoD personnel legal protections that prohibit the *active pursuit* of personal information that is outside the scope of prescribed counterintelligence screening issues.<sup>5</sup>

In terms set forth by DoDI 5210.91, the NRO is only authorized to conduct one type of polygraph test under the auspices of personnel security screening (PSS).<sup>6</sup> This test is identified as a counterintelligence-scope polygraph examination. DoDI 5210.91 defines a counterintelligence-scope polygraph examination as a method of credibility assessment “that uses relevant questions limited to prescribed CI issues.”<sup>7</sup> Furthermore, DoD authority directs Heads of DoD Components to develop relevant counterintelligence-scope polygraph test questions “consistent with” the terms identified within DoDI 5210.91.<sup>8</sup> As these terms and definitions make clear, the DoD intends to draw sharp distinctions between counterintelligence and lifestyle (expanded scope) polygraph screening tests.

At NRO, however, Polygraph Management Branch (PMB) has institutionalized a unique method of conducting security screening polygraph examinations that targets the collection of lifestyle information on DoD personnel. This circumvention of the DoD boundaries imposed upon counterintelligence-scope screening is effected by the manner in which polygraph testing is implemented. Within the DoD routine administration of lifestyle or expanded scope polygraph testing is tightly regulated and largely confined to the National Security Agency.<sup>9</sup> Nevertheless, civilian Air Force polygraph examiners

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<sup>1</sup> EO 12333, Section 2.2

<sup>2</sup> EO 12333, Section 2.4

<sup>3</sup> EO 12333, Section 2.3 (g)

<sup>4</sup> DoDI 5210.91, Enclosure 1, Reference (d), page 5

<sup>5</sup> DoDI 5210.91, Enclosure 4, Section 5, Ref (a), page 20

<sup>6</sup> DoDI 5210.91, Enclosure 4, Section 1, page 13

<sup>7</sup> DoDI 5210.91, page 36

<sup>8</sup> DoDI 5210.91, Enclosure 4, Section 2, Ref (k), page 17

<sup>9</sup> DoDI 5210.91, Enclosure 4, Section 1, Reference c, page 15

assigned to PMB receive official performance appraisals that incentivize the collection of lifestyle information via the counterintelligence screening process. Consequently, for purposes of promotion and the distribution of cash bonuses, PMB formally evaluates civilian Air Force polygraph examiners on their ability to obtain admissions outside the scope of the relevant counterintelligence test issues.

During the most recent performance appraisal period, civilian Air Force polygraph examiners at NRO received formal job evaluations based upon criteria that rewarded the collection of lifestyle information during counterintelligence-scope testing. In this performance appraisal, the criteria established under “Relevant Reportable Information Collected” were identified as “Admission Category Codes 55 and 66.”<sup>10</sup> By using such codes, the objective reviewer of this Air Force performance appraisal is unable to determine the specific type of information included in these categories. But, when referencing the internal *Reportable Information Guidelines* published by PMB during this appraisal period, Admission Category Code 55 is defined as information “outside the scope of the relevant CSP test issues.”<sup>11</sup>

More explicitly, Code 55 information includes the following:

“Admissions made outside the scope of relevant CSP test issues that pertain to intentional involvement in *Deviant/Criminal Sexual Behavior, Alcohol Abuse, Illicit Drugs, and/or serious Criminal Activity*”

“Admissions made outside the scope of relevant CSP test issues that pertain to *Unexplained Wealth or Financial Irresponsibility*”

“Admissions made outside the scope of relevant CSP test issues that pertain to *Personal Conduct related behaviors that clearly call into question the examinee’s trustworthiness and ability to protect classified information*”

“Admissions of reportable *Psychological Conditions* that are made outside the scope of relevant CSP test issues”

Thus, once the bureaucratic terminology is made clear, Code 55 is clearly a formalized euphemism for lifestyle information. As such, under the terms of Code 55, NRO polygraph examiners gain latitude to use elicitation skills to identify lifestyle information and then collect it under the administrative guise of a polygraph test intended to be restricted to counterintelligence issues. And although PMB has internal standing operating instructions that attempt to characterize lifestyle information obtained during counterintelligence screening as “spontaneous admissions,” nothing could be further from the truth.<sup>12</sup>

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<sup>10</sup> See Enclosure 3, DCIPS Performance Appraisal Application, Performance Objective No.3, page 4

<sup>11</sup> See Enclosure 4, PMB *Reportable Information Guidelines*, Reportable Information Pertaining to ICD-704 Issues (55), page 2

<sup>12</sup> See Enclosure 5, PMB OI 106, page 12 - Operating Instruction (OI) 106 is presently used by PMB to guide polygraph testing. OI 106, however, neither cites DoD authority, nor integrates standard DoD terminology. This is surprising because the Air Force position description for polygraph examiners (43616) assigned to the NRO explicitly states that all duties are to be performed in compliance with DoD authority.

It is significant to note that in the Air Force performance appraisal process used by PMB to rank and rate polygraph examiners, Code 55 information is of equal value to information categorized as Code 66. Admissions categorized as Code 66 are defined as “involvement in any of the relevant CSP issues.”<sup>13</sup> Therefore, by weighting Codes 55 and 66 equally, PMB clearly establishes organizational collection priorities that indicate counterintelligence admissions are as significant as lifestyle admissions. In other words, for the purposes of career advancement, polygraph examiners at NRO target both categories 55 (lifestyle) and 66 (CI) information without distinction.

In this case, the numbers speak for themselves. To gain an appreciation of the extent to which polygraph examiners at NRO strive to fulfill PMB’s expectation that Code 55 information will be collected, a statistical evaluation of the admissions collected during counterintelligence-scope tests performed over an 11-month period by all NRO polygraph examiners in Chantilly, Virginia is provided below.

EXAMINER STATS																	
1 October 2010 - 31 August 2011																	
OL	EXAMINER	Nbr of Sessions	Nbr of Completed Exams	Nbr of Multiple Sessions	Bring Back Rate	55			66			Nbr of Adm	% of Adm	33	44	77	99
						Subtotal	Subtotal	Subtotal	Subtotal	Subtotal	Subtotal			Subtotal	Subtotal	Subtotal	Subtotal
G	Phillips, Mark	246	206	41	16.7%	2	7	9	4%	4	15	4	4				
G		230	220	10	4.3%	10	14	24	11%	6	24	6	3				
G		266	229	48	18.0%	8	11	19	8%	2	41	4	4				
G		192	176	16	8.3%	7	12	19	11%	5	8	4	2				
G		268	238	43	16.0%	9	25	34	14%	3	16	7	3				
G		276	236	41	14.9%	17	19	36	15%	7	24	7	10				
G		255	238	21	8.2%	17	31	48	20%	1	14	7	2				
G		255	220	32	12.5%	14	13	27	12%	5	31	8	3				
G		265	236	30	11.3%	5	7	12	5%	4	13	8	5				
G		272	237	42	15.4%	19	22	41	17%	2	58	7	7				
G		142	142	15	10.6%	2	7	9	6%	0	15	6	4				
G		26	23	0	0.0%	1	0	1	4%	0	2	0	0				
G		207	201	9	4.3%	16	16	32	16%	1	33	8	3				
G		229	224	11	4.8%	15	26	41	18%	1	25	9	1				
G		147	112	26	17.7%	4	9	13	12%	2	3	4	4				
OL Totals		3,030	2,732	344		349	343	356		107	723	171	120				
OL Averages		216	195	25	10.5%	11	10	25	12%	3	22	5	4				
Program Totals		6,764	5,830	893		349	343	692		107	723	171	120				
Program Averages		205	177	27	12.3%	11	10	21	11%	3	22	5	4				

Enclosure 1, above, is a statistical analysis of polygraph testing used by PMB to track examiner performance.<sup>14</sup> My manager provided these statistics to show my performance in relation to the other 14 examiners assigned at my Operating Location (OL). As reflected in Enclosure 1, the total number of admissions coded 55 and 66 that were collected by all 15 polygraph examiners assigned to this OL is 365.<sup>15</sup> Of this total number, 40 percent (146) of all admissions used to evaluate polygraph examiner

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Given these egregious omissions, it cannot be surprising to find that NRO polygraph practices have also strayed far from DoD community standards.

<sup>13</sup> See Enclosure 4, PMB *Reportable Information Guidelines*, Reportable CSP Related Information (66)

<sup>14</sup> See Enclosure 1, Examiner Stats 1 October 2010 to 31 August 2011

<sup>15</sup> See Enclosure 1, to arrive at 365 I combined Codes 55 (146) and 66 (219) for all 15 polygraph examiners.

performance were Code 55 information.<sup>16</sup> Within the assumed limitations of a DoD counterintelligence-scope polygraph test, a 40 percent collection rate for lifestyle information is difficult to characterize as being spontaneously derived. Thus, Code 55 reflects the expectations of management and polygraph examiners are effective at obtaining lifestyle information in a screening situation that purports to be limited to counterintelligence issues.

While the statistics in Enclosure 1 manifest the broad implementation of Code 55 as a collection priority, Enclosure 2, below, illustrates PMB's unique method of targeting lifestyle information on an individual case level.<sup>17</sup> Enclosure 2 is a standard document that every polygraph examiner receives to serve as notice of an impending counterintelligence-scope polygraph test. Prior to assigning these cases, managers at PMB screen these documents. This screening enables managers to assign the case to an "appropriate" examiner and it provides a medium through which official guidance is transmitted to examiners.

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<sup>16</sup> See Enclosure 1, to arrive at 146 I added Code 55 admissions for all 15 polygraph examiners.

<sup>17</sup> See Enclosure 2, Polygraph Request Composite Report, 11-GA-00738, 4 January 2011



00738

Jan 13  
7:30

Mark

\*\*\*\*UNCLASSIFIED\*\*\*\*

POLYGRAPH REQUEST COMPOSITE REPORT

20110104 10:32 AM

Page 1 of 1

**Subject:**

**SSN:**

**Requestor Name:** BONERNIC

**Phone:** 850-0964

**Urgency:** 45

**Type (C/S):** PRIORITY

**Briefed:** Y

**Company:** 0055

**Company Location:** 0055F

AIN 2364494

Mark  
Do not use "cycle,"  
Schedule for NRO  
Session. Make a  
thorough assessment of  
Subject's mental health  
1/4/11 (BD)

**POC Name**

**POC Nonsecure Phone**

**POC Secure Phone**

WHETSTONE, REBECCA A.

703-466-1566

N/A

**Issues:**

Subject was deemed Incomplete on her 2007 CIA polygraph. She provided noteworthy information regarding her depression, and due to her emotional state of being, she was not scheduled for a second session. She was diagnosed with an Adjustment Disorder with Depressed Mood and given a good prognosis. She was also diagnosed with ADHD and is taking Adderall. Her poly crossover is declined since her testing was not complete.

AB will send PMB Subject's information.

**Polygraph Admin Comments:**

Dec 22, 2010

This is a PRIORITY special request. Please see above for specific information regarding. Suspense date is Feb 5 2011. An ER is required. PLR

Subject SF-86 and other supporting documentation will be forwarded with the request  
NUMBER -703-379-1294/301-467-8451

6-2-1977  
Offutt AFB, NE  
NPP

\*\*\*\*UNCLASSIFIED\*\*\*\*

The specific case referenced in Enclosure 2, above, relates to a test subject who failed to complete lifestyle testing with another agency but was subsequently scheduled for counterintelligence-scope testing to obtain NRO accesses. In Enclosure 2, the reasons indicated for this subject's inability to complete lifestyle testing pertain to mental and emotional issues, not deception. Nevertheless, in fulfillment of the institutional

expectations established by Code 55, a PMB manager assigns this case to me and directs me to “make a thorough assessment of Subject’s mental health” during the conduct of a counterintelligence-scope test.<sup>18</sup>

While I do have a professional obligation to insure the test subject is healthy enough to submit to testing, I have neither the training nor education to credibly render a “thorough assessment” of anyone’s mental health. Of course, managers at PMB know this. Therefore, this guidance to pursue mental health topics during a counterintelligence-scope test is only logical under the terms of Code 55. I was being directed to develop derogatory information outside of the “official” scope of the test in order to satisfy Code 55 requirements.

In this context, PMB has used performance incentives to institutionally validate Code 55 information as an integral but non-standard component to the DoD counterintelligence-scope polygraph examination. Without placing questions of a lifestyle nature on the actual polygraph test, PMB has developed a method of using the polygraph as a backdrop to elicit information that exceeds counterintelligence limitations by using a system of performance incentives to reward examiners for obtaining Code 55 admissions. Consequently, at NRO, the DoD counterintelligence-scope test is employed as a vehicle to actively pursue lifestyle information. This practice violates the rights of Americans and is non-compliant with EO 12333 and DoDI 5210.91.

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<sup>18</sup> See Enclosure 2, the handwritten guidance reads as follows: “Mark, Do not use SYLE. Schedule for AM session. Make a thorough assessment of Subject’s mental health.” SYLE is an abbreviation for Since Your Last Exam.